

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID ZEF CUKAJ,

Movant,

File No. 2:07-CV-251

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

_____ /

MEMORANDUM OPINION AND ORDER

Movant David Zef Cukaj pleaded guilty to using interstate commerce facilities in the commission of a murder-for-hire, 18 U.S.C. § 1958. On December 1, 2000, Movant Cukaj was sentenced to 120 months of imprisonment and three years of supervised release. Movant's sentence explicitly provided that the 120 months of imprisonment "shall be served *consecutively* to the state court sentence defendant is presently serving in case number 98-1872FH out of the 16th Circuit Court in Mt. Clemens, MI." (File No. 2:00-CR-6, Dkt. No. 21, Judgment (emphasis added).) Movant now seeks credit for the time he served in state prison before beginning his federal term of imprisonment. Movant makes his motion pursuant to 18 U.S.C. § 3582(c)(1)(B)(2); however, there is no such subsection. Therefore the Court will consider his motion under § 3582(c)(1)(B) and (c)(2).

After a district court has imposed a sentence it may not modify the sentence except as permitted under 18 U.S.C. § 3582 and 28 U.S.C. § 2255. 18 U.S.C. § 3582(c); 28

U.S.C. § 2255(b). Under § 3582(c)(1)(B) a district court may modify a sentence as permitted by Federal Rule of Criminal Procedure 35. 18 U.S.C. § 3582(c)(1)(B). Rule 35 permits a court within seven days of sentencing to correct an “arithmetical, technical, or other clear error,” or on the government’s motion a court may reduce a defendant’s sentence if the defendant has provided substantial assistance to the government. Fed. R. Crim. P. 35(a-b). Rule 35(a) is inapplicable as well over seven days have passed since Movant was sentenced. Rule 35(b) is inapplicable as this motion was not made by the government and there has been no allegation that Movant has provided substantial assistance to the government. Under § 3582(c)(2) a district court may modify a sentence when the defendant was sentenced under a sentencing range that was subsequently lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Section 3582(c)(2) is inapplicable as Movant has not made any contention that the sentencing range that was applied to him has subsequently been lowered by the Sentencing Commission.

Accordingly,

IT IS HEREBY ORDERED that Movant David Zef Cukaj’s motion to modify the terms of imprisonment (Dkt No. 1) is **DENIED**.

This case is concluded.

Date: April 23, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE